FILED
MAY 23 19
MICHAEL RODAK, JR.

No. 73-1601

In the

Supreme Court of the United States

OCTOBER TERM, 1973

WILLIAM E. CHRISTENSEN,

Petitioner,

vs.

BOARD OF EDUCATION TOWNSHIP HIGH SCHOOL DISTRICT NO. 203; SEYMOUR GALE, President of the Board; PETER TODHUNTER, MRS. WILLIAM BOONE, MRS. EDWARD HOFFMAN, MR. STANLEY HUGHEY, MRS. HULBURD WAMPLER, LAWRENCE GOUGLER, Members of the Board; S. FRANCIS OVERLAN, Acting Superintendent; DAVID H. COX, Principal; ERLE W. LAIR, Director of Student Services; ANN ALBERT, Director of Instructional Services; ROBERT W. JEWELL; Administrative Supervisor,

Respondents.

BRIEF IN OPPPOSITION TO PETITION FOR WRIT OF CERTIORARI

KEEHN LANDIS
111 West Monroe Street
Chicago, Illinois 60603
(312) 726-6130
Attorney for Respondents

Of Counsel:
CHAPMAN AND CUTLER
111 West Monroe Street
Chicago, Illinois 60603

The Scheffer Press, Inc.—(312) 263-6850

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-1601

WILLIAM E. CHRISTENSEN,

Petitioner,

vs.

BOARD OF EDUCATION TOWNSHIP HIGH SCHOOL DISTRICT NO. 203; SEYMOUR GALE, President of the Board; PETER TODHUNTER, MRS. WILLIAM BOONE, MRS. EDWARD HOFFMAN, MR. STANLEY HUGHEY, MRS. HULBURD WAMPLER, LAWRENCE GOUGLER, Members of the Board; S. FRANCIS OVERLAN, Acting Superintendent; DAVID H. COX, Principal; ERLE W. LAIR, Director of Student Services; ANN ALBERT, Director of Instructional Services; ROBERT W. JEWELL; Administrative Supervisor,

Respondents.

BRIEF IN OPPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner, William E. Christensen (formerly an untenured teacher employed by Respondents), has failed to set forth in his Petition any persuasive grounds for the granting of such Petition. The refusal of Respondents to renew Petitioner's teaching contract was sustained by

the Court of Appeals upon two grounds; (1) he was not entitled to a hearing, (2) he received a full and fair hearing.

1. PETITIONER WAS NOT ENTITLED TO A HEARING

The decision of the Court of Appeals is not conflict with any decision of any other Court of Appeals in a similar case. Petitioner has cited only one other decision of a Court of Appeals, and that is *Wilderman* v. *Nelson*, 467 F.2d 1173 (8th Cir. 1972). The *Wilderman* decision related to a nontenured social worker, and the court there found that the findings of the administration of the St. Louis City Welfare Office might

> "imply that Wilderman was disloyal to her superiors and thereby brand her as an undesirable employee." (467 F.2d at 1176)

It was the finding of disloyalty that caused the Court of Appeals to determine that a "stigma" might attach which Miss Wilderman was entitled to challenge in a hearing.

There was no such implication of disloyalty in any of the findings of the Christensen record. It was simply a matter of determining whether or not Mr. Christensen met the qualifications which New Trier deemed necessary or appropriate for a member of its faculty.

Consequently, the Christensen case is one which particularly fits within the footnote which appears in *Board of Regents* v. *Roth*, 408 U.S. 564, 33 L.Ed.2d 548 (see footnote at p. 559 of 33 L.Ed.2d).

Petitioner Christensen has failed to demonstrate that the decision of the Court of Appeals for the Seventh

Circuit was in conflict with any applicable decision of this Court. The *Roth* case is completely dispositive of the questions raised, in so far as Petitioner argues that he was entitled to a hearing as a matter of right, and was relied upon by the Court of Appeals in its decision.

2. PETITIONER RECEIVED A FULL AND FAIR HEARING

On the second point, i.e, that the hearing received was inadequate, Petitioner repeatedly asserts that the evidence at the hearing was "pure hearsay." (Petition for Writ of Certiorari, pp. 2, 4, 5, 10, 11, 12).

The Court of Appeals particularly found that

> "The hearing the Board held in plaintiff's case was full and fair." (Petition for Writ of Certiorari, p. A3)

In addition, the Court of Appeals particularly found that Petitioner's characterization of the record as containing only hearsay was erroneous. (Petition for Writ of Certiorari, p. A4)

The District Court also, specifically found that

> "The only issue which plaintiff challenged was regarding his competency as a teacher. On that question there was competent testimony at the hearing." (Petition for Writ of Certiorari, p. A10)

It is evident that Petitioner's insistence that the failure to renew his contract was based upon "pure hearsay" is factually false as found by both the trial court and the Court of Appeals.

The cases relied upon by the Petitioner as establishing the law of the State of Illinois with respect to the use

of hearsay in administrative proceedings do not support Petitioner's position which he sets forth on page 7 of the Petition.

In *Werner* v. *Community Unit School District No. 4*, 40 Ill. App. 2d 491 (which involved a *tenured* teacher), the Court pointed out that major portions of the evidence offered consisted of hearsay, but then recited that there was competent evidence in the record, and

> "that the causes, or at least some of them, set out in the Notice of Dismissal as reasons for the dismissal of plaintiff is (sic) supported by competent substantial evidence." (Op. cit. 497)

Consequently, the case stands for the proposition that as long as there is substantial competent evidence supporting some of the reasons for dismissal, the fact that hearsay (even prejudicial hearsay) is admitted does not vitiate the findings of the School Board and, certainly, does not constitute denial of due process of law.

The case of *Chandler* v. *East St. Louis School District 189*, 35 Ill. App. 2d 317 (again involving a tenured teacher), did not deal with a question of hearsay evidence at all, but involved a severe conflict in the evidence, and the Appellate Court simply sustained the finding of the trial court that the Board's decision was contrary to the manifest weight of the evidence.

The *Allione case*, 29 Ill. App. 2d 261, 173 N.E. 2d 13 (1961), did contain a discussion of hearsay evidence, but finally concluded that there was "no competent evidence" on the issue of whether the teacher's offense was "remediable" (a requirement under Illinois law with respect to tenured teachers).

This Court should not grant certiorari for the purpose of simply reviewing the record of an administrative proceeding to find out whether or not the findings of the Board are supported by competent evidence. Both the trial court and the Court of Appeals have already found such to be the case.

Not only was Mr. Christensen not entitled to a hearing under the decision in *Roth*, but he, in fact, received a full and fair hearing.

It is respectfully submitted that the Petition for Certiorari should be denied.

Respectfully submitted,

Board of Education Township
High School District No. 203, et al.
KEEHN LANDIS
111 West Monroe Street
Chicago, Illinois 60603
(312) 726-6130
Attorney for Respondents

Of Counsel:
CHAPMAN and CUTLER
111 West Monroe Street
Chicago, Illinois 60603